



STATE OF VERMONT  
OFFICE OF THE ATTORNEY GENERAL  
109 STATE STREET  
MONTPELIER, VT  
05609-1001

To: Rep. Michael Marcotte, Chair, Commerce and Economic Development Committee  
Rep. Emilie Kornheiser, Chair, Ways and Means Committee  
Sen. Ann Cummings, Chair, Finance Committee  
Sen. Kesha Ram Hinsdale, Chair Economic Development, Housing, and General Affairs Committee

From: Christopher J. Curtis, Director, Consumer Assistance Program; Assistant Attorney General; Chair, Misclassification Task Force

Date: January 17, 2023

Re: *Misclassification Report*

Pursuant to the requirements of Act 85 (of 2020), the Office of the Attorney General is pleased to announce results of its cooperation with the Vermont Department of Labor in investigating employers that may have misclassified employees and failed to pay contributions to the State Workers' Compensation Administration Fund and/or the Unemployment Insurance Trust Fund. As a result of these investigations, the Attorney General's Office and the Department are working to ensure that all employers are complying with the law.

In the past 12 months the Worker's Compensation Division received approximately 250 complaints of businesses operating without proper insurance coverage. Of those complaints, 23 (or just under 10 percent) were assigned for investigation after an initial screening with the remainder deemed unfounded. Of the 23 investigations, 17 resulted in the issuance of citations, with penalties assessed totaling \$291,800. Over the same period, the Unemployment Insurance (UI) Division completed 166 audits and 525 investigations. Of all audits and investigations, the UI Division found 90 instances of misclassification picking up a total of 721 misclassified workers and unpaid contributions of \$51,822.88. This amount does not include assessed interest or penalties.

The Department made referrals to the Attorney General's Office of five employers that failed to cooperate with Department investigations into employee misclassification. The Attorney General's Office used the authority recently granted to it by the Vermont Legislature to help advance these investigations. In three cases, the Attorney General's Office succeeded in obtaining financial records and other documents needed to complete misclassification investigations, resulting in the Department finding the employers owed a total of approximately \$30,000 in past due contributions to the unemployment compensation fund and penalties for employee misclassification. These employers are also subject to a one-year ban on contracting

with the State as a result of the misclassification findings. In the other two cases referred to the Attorney General's Office, the employers' continued failure to cooperate resulted in the Attorney General obtaining civil penalties in the amount of \$2,500 in each case, with investigations still pending against the employers.

The Attorney General's Office and the Department are committed to continuing to work together to ensure that employers support the State's vital Workers' Compensation Administration Fund and Unemployment Insurance Trust Fund as required and classify their workers as employees when appropriate. Any worker that believes they have been misclassified, or business competitor that believes a competitor is avoiding legal requirements to gain an unfair advantage in the marketplace should report potential violations to the Vermont Department of Labor so it may pursue enforcement or refer a matter to the Office of the Attorney General.

A joint report of the Office of the Attorney General and the Department regarding joint enforcement activities and any proposed recommendations shall issue pursuant to the statute on or before January 15, 2024.